

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

JOSE ALFREDO PINA,

Plaintiff,

VS.

DOMINGO URIBE, JR., Warden,

Defendant.

CASE NO. 10-CV-278 H (BGS)

# ORDER DENYING CERTIFICATE OF APPEALABILITY

16 On February 3, 2010, Petitioner Jose Alfredo Pina (“Pina”) filed a petition to writ of  
17 habeas corpus. (Doc. No. 1.) On March 4, 2011, the Court issued an order denying  
18 Petitioner’s writ of habeas corpus and denying a certificate of appealability. (Doc. No. 24.)  
19 On April 6, 2011, Petitioner Pina filed an appeal to the Ninth Circuit Court of Appeals. (Doc.  
20 nos. 26, 28.) On April 6, 2011, Petitioner Pina also filed a motion for a certificate of  
21 appealability. (Doc. No. 27.)

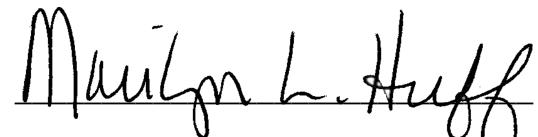
22 According to the Federal Rules of Appellate Procedure, a petitioner may not seek an  
23 appeal of a claim arising out of state court detention unless the petitioner obtains a certificate  
24 of appealability from either the district judge or a circuit judge under 28 U.S.C. § 2253. See  
25 Fed. R. App. P. 22(b). Section 2253 states that a certificate of appealability may only issue if  
26 the petitioner makes a “substantial showing of the denial of a constitutional right.” 28 U.S.C.  
27 § 2253(c)(1). Where, as here, the district court has rejected the petitioner’s constitutional  
28 claims on the merits, “[t]he petitioner must demonstrate that reasonable jurists would find the

1 district court's assessment of the constitutional claims debatable or wrong." Slack v.  
2 McDaniel, 529 U.S. 473, 483-84 (2000).

3 The Court previously denied a certificate of appealability. (See Doc. No. 24.) The  
4 Court will alternatively consider Petitioner's current motion as a motion for reconsideration  
5 of that denial. The Court has carefully reviewed Petitioner's original petition, this motion, and  
6 other related papers. From that careful review, the Court sees no good grounds for issuing a  
7 certificate of appealability in light of the controlling legal standards. Because Petitioner has  
8 not made a "substantial showing of a denial of a constitutional right," Slack, 529 U.S. at 483-  
9 84, the Court declines to issue a certificate of appealability.

10 **IT IS SO ORDERED.**

11 DATED: April 22, 2011

  
12 MARILYN L. HUFF, District Judge  
13 UNITED STATES DISTRICT COURT

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